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July 1, 2002

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**BY HAND DELIVERY**

Marlene H. Dortch, Esquire  
Secretary  
Federal Communications Commission  
445 12th Street, NW  
Washington, DC 20554

**Re: Notification of *Ex Parte* Communications  
MM Docket Nos. 01-235 and 96-197**

Dear Ms. Dortch:

This is to advise you, in accordance with Section 1.1206 of the FCC's rules, that on June 30, 2002, George L. Mahoney, General Counsel and Secretary of Media General, and I had four separate meetings with the following individuals: Catherine Bohigian, media legal assistant to Commissioner Kevin J. Martin; Susanna Zwerling, media legal assistant to Commissioner Michael J. Copps; Susan Eid, media legal assistant to Chairman Michael J. Powell, and Paul Gallant, attorney, Media Bureau; and Commissioner Kathleen Q. Abernathy and her media legal assistant Stacy Robinson. John Feore of this office joined us for the meetings with Susan Eid, Paul Gallant, Commissioner Abernathy and Stacy Robinson.

The discussions involved Media General's concern with the FCC's intention, announced to the press on June 17, 2002, to conduct studies, seek public comment on the studies, and then consolidate the above-referenced dockets in one large media ownership rule making. Media General distributed the attached hand-outs at the meetings and raised several of the points noted therein during the meetings.

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Marlene H. Dortch, Esquire  
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As required by section 1.1206(b), two copies of this letter are being submitted for each of the above-referenced dockets.

Very truly yours,

A handwritten signature in black ink, appearing to read 'M. Anne Swanson', with a long horizontal flourish extending to the right.

M. Anne Swanson

Enclosures

cc w/encls. by hand delivery:

The Honorable Kathleen Q. Abernathy  
Susan Eid, Esquire  
Susanna Zwerling, Esquire  
Catherine Bohigian, Esquire  
Stacy Robinson, Esquire  
Paul Gallant, Esquire

**NEWSPAPER/BROADCAST CROSS-OWNERSHIP PROCEEDING**

(MM Docket Nos. 01-235 and 96-197)

- I. *Section 202(h) Violation* -- The newspaper/broadcast cross-ownership proceeding must be severed from any consolidated broadcasting ownership proceeding to ensure compliance with Section 202(h) of the Telecommunications Act of 1996 ("1996 Telecom Act").
- Congressional intent -- Section 202(h) was adopted six years ago:
- “The Commission *shall* review its rules adopted pursuant to this section and all of its ownership rules biennially as part of its regulatory reform review under section 11 of the Communications Act of 1934 and *shall* determine whether any of such rules are necessary in the public interest as the result of competition. The Commission *shall* repeal or modify any regulation that it determines to be no longer in the public interest.”
- *Fox*:
- “Section 202(h) carries with it a presumption in favor of repealing or modifying the ownership rules.” (*Fox Television Stations, Inc. v. FCC*, 280 F. 3d 1027, 1048 (D.C. Cir. 2002))
- “The Commission’s wait-and-see approach cannot be squared with its statutory mandate promptly . . . to ‘repeal or modify’ any rule that is not ‘necessary in the public interest.’” (280 F. 3d at 1042).
- “The mandate of § 202(h) might better be likened to Farragut’s order at the battle of Mobile Bay (‘Damn the torpedoes! Full speed ahead!’) than to the wait-and-see attitude of the Commission. . . .” (280 F. 3d at 1044).
- *Sinclair*:
- “In applying the statute, we have squarely considered and rejected the kind of cautionary approach employed by the FCC. . . .” (*Sinclair Broadcast Group, Inc. v. FCC*, 284 F. 3d 148, 171 (D.C. Cir. 2002) (Sentelle, J, partially dissenting))
- The 1996 Telecom Act places the burden on those proposing to retain a rule. A very complete record supporting repeal has been compiled by the FCC. Those who would continue the rule in place have offered conclusions not studies. The FCC simply does not need any additional studies and further consolidated review of this rule to prove that repeal is warranted.
- Delaying action on the newspaper/broadcast cross-ownership rule for such studies and further review beyond the end of calendar year 2002 violates the biennial review requirement of Section 202(h).

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- II. *Waiver Reform* -- If the proceeding is not severed, waivers of the newspaper/broadcast cross-ownership rule should be available in single-station transactions and until any consolidated rulemaking is completed.
- Currently, as a matter of FCC staff processing policy, the FCC only entertains waivers of the newspaper/broadcast cross-ownership rule in multi-station, multi-market transactions. This needs to be changed to allow single-market, single-station transactions. *Cf. Fidelity Television, Inc.*, FCC 02-140, released May 3, 2002 (permitting waiver of television duopoly rule and one-to-a-market rule in a single station transaction).
  - Currently, the FCC is only granting waivers for specific periods of time (*e.g.*, 24 months for Fox in the Chris-Craft acquisition, six months for Tribune in Hartford television acquisition). Waivers need to be available until the conclusion of any new consolidated rule making.
  - Broadcasters and newspaper owners can point to many acquisitions they have had to forego because a television property was for sale without being part of a larger transaction. Once the national television cap is reformed on remand in *Fox*, more stations will probably be placed on the market. Newspaper owners in those markets will not be able to compete with other entities in pursuing such acquisitions.
  - The delay caused by a consolidated rulemaking and subsequent appeals will likely continue until the beginning of the next television renewal cycle, which commences with the filing of renewal applications on June 1, 2004.
  - A change in the FCC's waiver policy is needed now, so newspaper owners are not competitively disadvantaged in the station acquisition market during the lengthy period that is likely to come with additional studies and any consolidated rule making proceeding.

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